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March 8, 2019

VIA ECF

The Honorable Nina Gershon, U.S. District Judge
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re : **Bow and Drape, Inc. v. Truly Commerce, Inc. and Day to Day Imports, Inc.**
Insured : Truly Commerce, Inc.
EDNY Index : 18-cv-05066 (NJ) (SJB)

PMT File No. : XL-00821/JLB

Your Honor:

A. Introduction:

My office represents Defendant Truly commerce, Inc. (Hereinafter "TC") in this action. On March 5, 2019 we received a letter motion from Defendant Day to Day Imports Inc. (Hereinafter "DTD") requesting a pre-motion conference to address an anticipated Motion to Dismiss pursuant to Federal Rule 12(b)(6) and additionally/or in the alternative for a More Definite Statement pursuant to Federal Rule 12(e). I write to partially oppose that portion of DTD's motion which seeks to dismiss TC's cross claims.

TC understands that service of this letter via ECF constitutes timely service of our partial opposition.

B. Basis of Partial Opposition:

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At the time TC's Answer and Cross-Claims were interposed, we did not have the opportunity to obtain the information necessary to make more factually specific allegations against DTD. Dismissing our cross-claims pursuant to Rule 12(b)(6) is a drastic remedy. Thus, we have no opposition to that portion of the motion pursuant to Federal Rule 12(e) which seeks a more definite statement of TC's cross claims to allow for a responsive pleading.

Legal Argument

i. Motion to Dismiss for Failure to State a Claim:

Rule 13(g) allows any party to make a cross claim against a co-party. The rule does not specify how the allegations are to be pled. At the time TC's Answer and Cross-Claims were interposed, we did not have the opportunity to obtain the information necessary to make more specific allegations against DTD. TC requests the opportunity to amend our cross claims to provide a more definite statement of each cross claim.

ii. Motion for a More Definite Statement:

Defendant TC has no opposition to plaintiff's motion pursuant to Rule 12(c) and requests the opportunity to amend our cross claims to provide a more definite statement of each cross claim.

For the reasons stated above Defendant Truly Commerce, Inc. requests the opportunity to amend our cross claims to provide a more definite statement of each cross claim against DTD.

Very truly yours,

PILLINGER MILLER TARALLO, LLP

By


JENNIFER L. BUDNER

Served on All Parties via ECF



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